

EXHIBIT 3

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ARTICLE XI. DEFENSE AND INDEMNIFICATION OF EMPLOYEES AGAINST DAMAGE SUITS, CLAIMS, ETC.

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Sec. 13-11-1. Definitions.

For the purpose of this article, the following definitions shall apply:

Employees shall include, in addition to appointees as defined in the Charter, and all employees on the city payroll, including all physicians and dentists employed on a salaried or contractual basis by the department of health, retired employees or appointive officers, and all physicians and dentists whether volunteers, staff, intern, resident or special duty, whether or not on city payrolls, assigned to patient care duties in Detroit General Hospital, whose credentials have been approved by the director of hospitals.

Official duties shall mean acts done pursuant to authority conferred by law or within the scope of employment or in relation to matters committed by law to the officer or employee's control or supervision or committed to the department or office under whose authority the officer or employee is acting, whether or not there is negligence in the doing of such acts. Where there is willful misconduct or lack of good faith in the doing of any such acts, the same shall not constitute the performance of the official duties of any appointive officer or employee of the city within the operation or effect of this article.

(Code 1964, § 16-13-1; Ord. No. 516-H, § 1, 9-29-82)

Cross reference—Definitions and rules of construction generally, § 1-1-2.

Sec. 13-11-2. Council may order reimbursement for certain causes.

At the discretion of and only upon approval by the city council, the city may pay, on behalf of any city officer or employee, all or part of any sum which such officer or employee might become legally obligated to pay as damages because of:

- (1) Bodily injury, sickness or disease, including death, at any time resulting therefrom, sustained by any person; or
- (2) Injury to or destruction of property, including the loss of use thereof; or

- (3) Illegal confinement, detention or other alleged injury caused by or arising out of the performance in good faith of the official duties of any such officer or employee.

(Code 1964, § 16-13-2)

Sec. 13-11-3. Conditions for defense and reimbursement by city.

No payment shall be made pursuant to section 13-11-2 except under the following conditions:

- (1) Whenever an officer or employee of the city has cause to believe that he may be sued by reason of, or as the result of, the performance in good faith of his official duties, such officer or employee shall promptly file with the corporation counsel a written notice of the act performed or the occurrence which gives rise to such belief, containing a statement of the facts and circumstances thereof, including names and addresses of persons who might bring suit, if known to such officer or employee, and the names and addresses of any witnesses, if likewise so known; and
- (2) Upon the receipt of any claim, demand, notice, summons or complaint, the officer or employee shall promptly forward the same to the corporation counsel. In addition thereto, such officer or employee shall promptly file a written request that he be represented by the corporation counsel's office in the matter. Such request shall first be submitted to the head of the department in which such officer or employee is working. It shall then be the duty of the department head to transmit the request for representation to the corporation counsel, along with the department head's recommendation as to whether or not the officer or employee should be represented; and
- (3) The officer or employee shall cooperate with the corporation counsel, and upon the request of the corporation counsel shall attend hearings and trials and assist in effecting settlements, securing and giving evidence and obtaining the attendance of witnesses. However, such officer or employee shall not, except, at his own cost, voluntarily make any payment, assume any obligation or incur any expense in connection therewith; and
- (4) The officer or employee shall consent to and concur in any compromise or settlement of the claim or suit against him; and
- (5) The city council must find and determine that the claim, demand or suit against the officer or employee arises out of or involves the performance in good faith of the official duties of the officer or employee involved.

(Code 1964, § 16-13-3; Ord. No. 550-H, § 1, 5-13-83; Ord. No. 555-H, § 1, 7-20-83)

Sec. 13-11-4. Report to council by corporation counsel.

Whenever the corporation counsel receives from any city officer or employee, any claim, demand, notice, summons or complaint with such officer or employee's request for representation by the corporation counsel with the recommendation of the head of the department as provided in section 13-11-3(3), the corporation counsel shall promptly transmit to the city council a report on the matter, together with his recommendation as to whether or not the corporation counsel should represent the officer or employee as requested, and whether or not the city council should find and determine that the claim, demand or suit against the officer or employee arises out of or involves the performance in good faith of the official duties of such officer or employee.

(Code 1964, § 16-13-4)

Sec. 13-11-5. Determination by city council.

- (a) Upon receipt from the corporation counsel of the report and recommendation provided for in section 13-11-4, the city council shall consider and determine whether the corporation counsel shall represent the officer or employee in the matter and find and determine whether or not the claim, demand or suit arises out of or involves the performance in good faith of the official duties of such officer or employee. However, pending such determination by the city council, the corporation counsel shall represent any officer or employee making request therefor which had been approved by the head of the department as provided in section 13-11-3(2).
- (b) The finding and determination by the city council as to whether or not any such claim, demand or suit arises out of or involves the performance in good faith of the official duties of such officer or employee shall be binding and final.

(Code 1964, § 16-13-5)

Sec. 13-11-6. Payments by city to be reduced by employees' insurance.

If a city officer or employee has valid and collectible insurance covering or protecting against liability as covered by this article, payment under this article shall be limited to amounts in excess of the limits of such insurance.

(Code 1964, § 16-13-6)

Sec. 13-11-7. City to be subrogated to rights of employees; execution of instruments and papers by employees.

No payment shall be made by the city pursuant to this article unless the city is subrogated to all rights of recovery therefor against any person and unless the officer or employee on whose behalf payment is made executes and delivers to the city instruments and papers and does whatever else is necessary to secure such rights to the city.

(Code 1964, § 16-13-7)

Sec. 13-11-8. Duty of employees to maintain automobile insurance.

This article shall not relieve any officer or employee from securing and keeping in force the insurance required to be provided by section 13-1-4 governing the use of privately owned automobiles while used in the performance of their official duties.

(Code 1964, § 16-13-8)

Sec. 13-11-9. Application to physicians and dentists.

- (a) Notwithstanding any provisions of this article to the contrary, except section 13-11-1, the city shall pay, on behalf of any physician or dentist, whether salaried, contractual, volunteer, staff, special duty, resident, or intern, who is an employee as defined in section 13-11-1, all of any sum which such employee might become legally obligated to pay as damages resulting or arising out of his official duties, because of:
 - (1) Bodily injury, sickness or disease, including death, at any time resulting therefrom, sustained by any person; or
 - (2) Injury to or destruction of property, including the loss of use thereof; and

- (3) Illegal confinement, detention or other alleged injury caused by or arising out of the performance in good faith of the official duties or any such employee; except that the city shall be responsible to a physician or dentist who is a regular full-time member of the faculty of Wayne State University and serving on the Medical Staff at Detroit General Hospital, only for that sum which such employee shall be legally obligated to pay as damages which is in excess of his insurance coverage which shall be not less than one hundred thousand dollars (\$100,000.00) for each claim and three hundred thousand dollars (\$300,000.00) annual aggregate.
- (b) This section shall not be applicable if the physician, dentist, resident or intern fails to comply with all of the provisions of section 13-11-3, requiring written notice of any anticipated claim and the filing of all pleadings with the law department, together with a written request that he be represented in the matter by the law department.
- (c) Nothing herein contained shall be deemed to extend the definition of employee, or the city's responsibility toward any employee, beyond the clear terms of this article.

(Code 1964, § 16-13-9)